

Acting as an Executor

Wherever there's a will, there's an executor (or executrix). The executor is appointed to act as the personal representative when "the testator" becomes "the deceased." It is a considerable responsibility. Before asking someone to be your executor or before you agree to be the executor for someone else, it is a good idea if you understand what it entails before it gets cast in stone in a last will and testament.

Generally speaking, upon the death of the testator and the probate of the will all of the assets devolve upon the executor. In other words, the executor becomes the legal owner of all of the deceased's assets. He or she or it (in the case of a corporate executor) does, however, hold the assets "in trust" for the beneficiaries. This is why the executor must be trustworthy and it is also why the executor is referred to as the "trustee."

The executor steps into the shoes of the testator (deceased). It is the executor who decides what is to be done with the remains and deals with the funeral arrangements (usually done in conjunction with the family where there hasn't been a prearranged plan). It is the executor who has to take control of the deceased's assets, pay the debts, notify the beneficiaries, ensure investments are authorized, insure against perils and continue or maintain court actions. In addition to this, of course, it is the executor who has to keep accounts and be ready to account to beneficiaries and to the court that grants the probate. In short, the responsibilities are quite onerous.

Some of the things you may wish to consider before asking or agreeing to become an executor are as follows:

1. What are the terms of the will? Will it be an outright distribution allowing you to pay it out and close the file or will it involve being a trustee for a number of beneficiaries or over a long period of time.
2. What are the nature of the assets? Will you be expected to run a business or will you be expected to have special knowledge to administer the affairs?
3. Is the executor going to be a beneficiary as well? If so, how does he/she get along with the other beneficiaries?
4. Are there any wills of other people in which the testator is named as executor thereby possibly making the executor an executor again by chain of representation? NOTE: If you had no trouble figuring this one out, either you're a lawyer or you may not need one.
5. How much time will be involved? Will it be a couple of hours a month, a week, a day or a

full time job?

6. Will there be expenses, will there be remuneration involved and, if so, how much?
7. Will the executor have any trouble dealing with the guardian(s) of the infant children (assuming the executor and the guardian are not the same person)?

While by no means exhaustive, that list of questions, if discussed and answered, should provide a fairly firm basis for understanding what is involved in the process.

Accepting the responsibility of being an executor is a considerable commitment. The request should also be made with that knowledge. By talking it over with your lawyer and with each other, it can avoid a lot of serious problems down the line (hopefully a long way down the line) when you're not around to sort them out yourself.

Whatever you do, don't assume that the executor you happen to name will just agree to do the job. If he doesn't agree to act, there is a good chance you will accidentally turn some of the members of the legal profession into some of your beneficiaries .